

encouraged and assisted to articulate their own strengths and needs, the goals they are seeking for themselves, and what services they think are required to meet these goals.<sup>36</sup>

44. Class members, their parents, and foster parents shall be involved in the planning<sup>37</sup> and delivery of services, in accordance with paragraphs (a)-(d) below. The right of class members, parents, and foster parents to participate in treatment planning and delivery may be restricted only according to a specified administrative process. DHR shall promulgate a policy, acceptable to both parties, describing under what circumstances and according to what procedures restrictions may be imposed.

a. The class member shall be treated as a partner in the planning and delivery of services if the class member is age 10 or older and, if the class member is under the age of 10, when possible.

b. The class member's parents shall be treated as partners in the planning and delivery of services if the class member is living at home or if the goal is for the class member to return home.

c. Foster parents shall be treated as partners in the planning and delivery of services whether or not the goal for the class member is to return home.

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<sup>36</sup> See Dunst, Trivette, and Deal, Enabling and Empowering Families: Principles and Guidelines for Practice (Brookline Books, Cambridge, MA: 1988).

<sup>37</sup> This includes, but is not limited to, the development of individualized service plans.

d. When necessary, services shall be provided class members and parents to enable them to participate as partners. Such services shall include transportation assistance, advance discussions, and assistance with understanding written materials.

45. The "system of care" shall promote class members' visitation with their parents and family.

a. The matter of visitation shall be addressed in the class member's individualized service plan. The frequency and circumstances of visitation shall depend on age and need. Visitation shall be viewed as an essential ingredient of family reunification services. Hence, when the goal is for the child to return home or live with a family member, visitation will be actively encouraged; assistance with transportation will also be provided.

b. Visitation may be arranged by the class member, the class member's parents or family, or the foster parents, as well as by DHR staff and the staff of residential facilities, in accordance with the individualized service plan.

c. Supervision of visitation shall be required only when there is a danger that the parent or family member with whom the class member is visiting will harm the class member unless the visit is supervised. When supervision of visitation is required, such supervision may be provided, as appropriate, by the class member's foster parents, as well as by DHR staff, the staff of residential facilities, or other designated persons.

d. DHR will promulgate a policy, acceptable to both

parties, implementing the principles set forth in paragraphs (a)-(c) above.

46. The "system of care" shall be sensitive to cultural differences and the special needs of minority ethnic and racial groups. Services shall be provided in a manner that respects these differences and attends to these special needs. These differences and special needs shall not be used as an excuse for failing to provide services.

47. The "system of care" shall conduct timely investigations of allegations that class members are being abused or neglected while living at home or with a relative or while in foster care or DHR custody.

48. The "system of care" shall embrace the philosophy of service delivery in home-based and community-based settings. Class members shall receive services in the least restrictive, most normalized environment that is appropriate to their strengths and needs.<sup>38</sup>

a. Class members shall be placed in the least restrictive, most normalized living conditions appropriate to their strengths and needs.<sup>39</sup> The class member's own home shall be considered the least restrictive, most normal placement. Following are other placements listed in ascending order in terms

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<sup>38</sup> To this end, services for class members shall not be unnecessarily segregated. See 29 U.S.C. §794 and the regulations promulgated thereto.

<sup>39</sup> This standard applies to the "permanent living situations" referred to in paragraph 50(e) as well as to other placements.

of restrictiveness: independent living;<sup>40</sup> a foster home; a therapeutic foster home; a group foster home; a group home; a child care institution; an institution. Institutional care shall be used only in an emergency and as a last resort. Class members shall be placed in family settings, whenever they can be cared for in such a setting with supportive services.

b. Siblings shall be placed together. DHR may promulgate a policy, acceptable to both parties, identifying circumstances in which exceptions to this principle may be permitted.

c. The "system of care" shall not initiate or consent to the placement of a class member in an institution or other facility operated by DMH/MR or by DYS unless the placement is the least restrictive, most normalized placement appropriate to the strengths and needs of the class member.

d. Class members, when in foster care or DHR custody, shall be integrated to the maximum extent feasible into normalized leisure and work activities.

e. DHR shall vigorously seek to assure that class members, when in foster care or DHR custody, are integrated to the maximum extent feasible into normalized school settings and activities.

49. Class members from Jefferson, Mobile, Montgomery, Madison, Houston, Tuscaloosa, Etowah, Calhoun, Walker, Lee, and

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<sup>40</sup> In this context, "independent living" means living without an adult caretaker.

Dallas counties shall be placed within their home county when removed from their homes.<sup>41</sup> Class members from other counties shall be placed within the region<sup>42</sup> in which their home county is located.<sup>43</sup> Exceptions to this principle are to be permitted only in exceptional circumstances with the written permission of the Director of the Division of Family and Children's Services or his/her designee.<sup>44</sup> DHR shall promulgate a policy, acceptable to the both parties, that describes when such exceptional circumstances are present.

50. The "system of care" shall promote permanency in class members' living situations.

a. When the goal is that the class member shall return home or be discharged to a family member, the "system of care" shall vigorously seek to achieve this goal.

b. When the goal of return home or discharge to family has been achieved, the "system of care" shall vigorously seek to avoid reentry of the class member into foster care.

c. The "system of care" shall make timely, competent

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<sup>41</sup> The requirement of in-county placement may be modified upon mutual consent of the parties if, during the development of the Implementation Plan, it appears that a regional approach would be preferable.

<sup>42</sup> The Implementation Plan shall specify the number of regions into which the state will be divided and which counties shall be considered a part of which region.

<sup>43</sup> The "regions" may include counties specified above.

<sup>44</sup> An example of such an exceptional circumstance is when an out-of-county or out-of-region placement is necessary to assure that the child lives with a family member.

decisions concerning whether and when class members should return home.

d. When a decision is made that a class member should not return home, DHR shall seek a timely dispositional hearing pursuant to Alabama Code §12-15-62(c) (1975).<sup>45</sup>

e. When the goal is that the class member not return home, the "system of care" shall vigorously seek a permanent living situation for the class member.

51. The "system of care" shall promote stability in class members' living situations.

a. The "system of care" shall be designed to minimize multiple placements. The "system of care" shall be based on the philosophy that the disruption of a placement is a failure of the system, not a failure of the class member.

b. Individualized service plans shall identify whether a class member is at risk of experiencing a placement disruption and, if so, will identify the steps to be taken to minimize or eliminate the risk.

c. Appropriate training will be required for, and appropriate supportive services will be provided to, foster parents and staff of residential facilities in order to minimize placement disruptions. In the case of foster parents, the services shall include intensive home-based services and respite care.

d. The "system of care" shall forbid summary

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<sup>45</sup> See also 42 U.S.C. §675(5)(C).

discharges from placements. DHR shall promulgate a policy, acceptable to both parties, that describes steps that must be taken prior to a class member's discharge from a placement. The policy may permit in exceptional circumstances the placement of a class member in a temporary, emergency setting without prior notice to DHR.

e. The "system of care" will avoid temporary, interim placements.<sup>46</sup> Class members shall be placed in settings that could reasonably be expected to deliver longterm care if necessary.<sup>47</sup> To this end, DHR will not place class members in shelters unless (i) the full array of services the class member needs can be provided the class member while residing in the shelter and (ii) it is likely that the class member's stay in foster care will not extend beyond his/her stay in the shelter.

f. The "system of care" will vigorously seek to ensure that law enforcement officers, juvenile court personnel, and others do not remove class members from their home and place them in foster care or DHR custody without first notifying the "system of care" and providing the system an opportunity to intervene to prevent the removal or placement.

52. The "system of care" shall ensure that the services identified in individualized service plans are accessed and

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<sup>46</sup> This "principle" is not meant to prohibit respite care.

<sup>47</sup> It has not been decided whether it is appropriate to make an exception to this standard that would permit DHR to make an initial placement in an "emergency" or "short-term" foster home when it is not known whether the child will need longterm foster care. This issue shall be resolved in the Implementation Plan.

delivered in a coordinated and therapeutic manner.

53. Services shall be provided by competent staff who are adequately trained and supervised and who have appropriate caseloads. The competence of staff, staff's training and supervision, and staff's caseloads shall be deemed adequate when the "system of care" is able to comply with the standards set forth in this decree.

54. Services provided class members and their families shall meet relevant professional standards in the fields of child welfare, social work, and mental health.

55. The "system of care" shall require that any behavior modification program employed in the treatment or management of a class member be individualized and meet generally accepted professional standards, including that:

a. The program rely primarily on rewards instead of punishments;

b. The program be based on a careful assessment of the antecedents of the behavior that the program is designed to change; and

c. The program be consistently implemented throughout the day, including in school,<sup>48</sup> residential, and leisure activity settings.

56. The "system of care" shall take an active role in

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<sup>48</sup> It is recognized that defendant cannot assure that a local education agency will consistently implement the behavior modification plan. Defendant's obligation is to seek to assure that the local agency will do so.



seeking to ensure that local education agencies<sup>49</sup> and the Alabama Department of Education (i) recognize class members' educational rights and (ii) provide class members with educational services in accord with those rights. Among other things, the "system of care" shall advocate for class members who are subjected to inappropriate and/or illegal disciplinary measures.

a. DHR staff, foster parents, and staff of residential programs shall receive training concerning:

(i). Class members' educational rights and needs, including their right to special education; and

(ii). The rights of class members under the IDEA and Section 504 of the Rehabilitation Act<sup>50</sup> with respect to school discipline, including expulsion, suspension, and the use of corporal punishment.

b. Individualized service plans shall incorporate information about class members' educational needs and identify how these needs will be met through the provision of specific services.

c. Before a class member is placed,<sup>51</sup> consideration must be given to:

(i). Whether the class member's educational needs

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<sup>49</sup> See 42 U.S.C. §1401(a)(8).

<sup>50</sup> 29 U.S.C. §794.

<sup>51</sup> It may be necessary to create limited exceptions to this rule. The matter of whether such exceptions should be developed shall be addressed in the Implementation Plan.

can be met in the proposed placement; and

(ii). If not, what steps shall be taken to ensure that the class member will receive appropriate educational services while in the placement.

d. The "system of care" will take steps to ensure that surrogate parents are appointed for class members as required by 20 U.S.C. §1415(b)(1)(B) and 34 C.F.R. §500.514.

e. Appropriate representatives of the "system of care" shall request to attend IEP meetings<sup>52</sup> and to participate in other similar efforts to plan appropriate educational services for class members entitled to receive special education.

f. Appropriate representatives of the "system of care" shall request to attend IFSP<sup>53</sup> meetings and to participate in other similar efforts to plan appropriate early intervention services for class members entitled to receive services under Part H of the IDEA.

g. The "system of care" shall seek to ensure that class members' IEP's are consistent with class members' individualized service plans.

h. DHR shall comply with all relevant requirements of the IDEA in those circumstances in which it acts as a "public agency" within the meaning of the IDEA.<sup>54</sup>

57. The "system of care" shall promote smooth transitions

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<sup>52</sup> See 42 U.S.C. §1414(a)(5); 34 C.F.R. §§300.343 & 300.344.

<sup>53</sup> See 42 U.S.C. §1477; 34 C.F.R. §§303.340 & 303.342-3.

<sup>54</sup> See 34 C.F.R. §§300.2 & 300.11